IN THE UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF TEXAS LUBBOCK DIVISION

STATE OF TEXAS AND TEXAS DEPARTMENT OF TRANSPORTATION, Plaintiffs, v. U.S. DEPARTMENT OF TRANSPORTATION, FEDERAL HIGHWAY ADMINISTRATION, Civil Action No. 5:23-cv-304 PETE BUTTIGIEG, in his official capacity as SECRETARY OF TRANSPORTATION, and SHAILEN BHATT, in his official capacity as ADMINISTRATOR OF THE FEDERAL HIGHWAY ADMINISTRATION, Defendants.

TEXAS'S STATUS REPORT

Plaintiffs (Texas) provides the following report in response to the Court's January 8, 2024 inquiry. Texas anticipates imminently filing a motion requesting a preliminary injunction enjoining the Final Rule, but counsel have been and will continue to pursue a negotiated agreement to avoid the need for emergency intervention, if possible. Responses to the Court's specific inquiries are provided below.

(1) Status of efforts to serve defendants.

Texas has successfully served Defendant U.S. Department of Transportation (DOT); Defendant Federal Highway Administration (FHWA); and Defendant Shailen Bhatt, in his official capacity as Administrator of the FHWA. Defendant Pete Buttigieg has received a copy of the summons and complaint on behalf of the DOT, but he has not accepted service in his official capacity as Secretary of Transportation due to mailing service issues. Counsel for Texas requested the Defendants consider waiving service on behalf of Pete Buttigieg given these circumstances.

(2) Extent Plaintiffs have had contact with Defendants about the case.

Counsel for Texas has succeeded in identifying counsel for Defendants. Based on schedules, counsel for the parties discussed the case on the morning of January 16. Specifically, counsel for Texas requested the Defendants provide a voluntary extension of the upcoming February 1, 2024 deadline identified in the Final Rule. Such an extension would prevent Texas from having to seek emergency relief immediately, or at least provide the parties additional time to find resolution on how to proceed with the case, without the need for emergency relief. Defendants have taken this under consideration and Texas is awaiting a response.

(3) Whether Plaintiffs intends to request emergency relief.

Texas does anticipate filing a motion requesting a preliminary injunction to enjoin the Final Rule and prevent Texas from needing to comply with the Final Rule's upcoming deadline on February 1, 2024, and other administrative actions thereafter. Meanwhile, counsel for Texas will continue trying to work out a resolution that would avoid the need for immediate Court's intervention before the deadline.

(4) Whether the Court should issue a scheduling order.

Texas defers to the Court's discretion about whether to impose a scheduling order. Presently, Texas anticipates filing an emergency motion, if necessary, on January 17, 2024.

Dated: January 16, 2024 Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on January 16, 2024, a copy of the foregoing document was electronically filed on the CM/ECF system, which will automatically serve a Notice of Electronic Filing on all attorneys of record in this case.

/s/ Logan Harrell
LOGAN HARRELL
Assistant Attorney General